

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL BIES	::	CASE NO. CV-1-00-682
Petitioner,	::	Judge Dlott
vs.	::	Magistrate Judge Merz
MARGARET, BAGLEY, WARDEN	::	<u>HAMILTON COUNTY</u>
Respondent.	::	<u>PROBATION DEPARTMENT'S</u>
		<u>REPLY TO PETITIONER</u>
		<u>MICHAEL BIES'</u>
		<u>MEMORANDUM CONTRA TO</u>
		<u>THE HAMILTON COUNTY</u>
		<u>ADULT PROBATION</u>
		<u>DEPARTMENT'S MOTION TO</u>
		<u>QUASH</u>

Now comes Movant, the Records Custodian of the Hamilton County Probation Department ("Movant"), by and through counsel, and gives his reply to Petitioner's Motion Contra Movant's Motion to Quash and moves this Court to quash the subpoena Duces Tecum issued to him by Petitioner, and to issue a protective order directing that the documents sought not be had, or ordering such other relief as the Court may deem just and proper. The motion in support of the reply is set forth in the attached memorandum.

Respectfully submitted,

MICHAEL K. ALLEN
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

/s/ Tamara S. Sack

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MEMORANDUM

1. INTRODUCTION

Plaintiff served a subpoena upon the Hamilton County Adult Probation Department Records Custodian (Movant) on November 5, 2004 to attend a deposition on November 16, 2004. The subpoena requests production of documents that pertain to an individual named Dallas Luther

Hayes aka Dallas Raines. Additionally, a subpoena was also issued to Movant for a deposition.

One of the documents sought is a victim's impact statement that was part of Dallas Luther Hayes aka Dallas Raines' criminal case in which he was found guilty of Gross Sexual Imposition on August 10, 1995 under Hamilton County Ohio Court of Common Pleas Case No. B9502257. Pursuant to the Ohio Revised Code at section 2947.051 a victim impact statement is confidential and not a public record. As such, on November 12, 2004, counsel for Movant filed a Motion to Quash the subpoena (Doc. 82).

On December 3, 2004, Petitioner filed a Memorandum Contra to Movant's Motion to Quash, in which he argues that S.D. Local Rules 37.1 and 37.2 apply in the present issue regarding documents Petitioner is seeking from Movant. Additionally, Petitioner argues the victim impact statement is not privileged for purposes of the federal habeas proceedings in which Petitioner's claim involves.

For the reasons stated below, Movant maintains that S.D. Local Rules 37.1 and 37.2 do

not apply and the victim impact statement being sought by Petitioner is a privileged document to which he is not entitled.

II. ARGUMENT

A. LOCAL RULE 37.1 AND 37.2 DO NOT APPLY TO THE SUBPOENA MOTION AT BAR

Plaintiff wishes to employ S.D. Local Rules 37.1 and 37.2 against Movant. Movant is not a party to the instant case and as such is not subject to the rules of discovery contemplated in Local Rules 37.1 and 37.2.

On November 5, 2004, Movant was served a Subpoena Duces Tecum and a Subpoena to take oral testimony pursuant to Federal Civil Rules 45(b) and 45(c). Accordingly, Counsel for Movant sought a Motion to Quash and a protective order under Fed. Civ. R. 45 filed on November 12, 2004 and within the time set-out in Fed. Civ. R. 45(a)(2)(B).

Movant did not fail to comply with S.D. Local Rules 37.1 and 37.2 as these rules do not apply to this Motion to Quash at bar.

B. THE VICTIM IMPACT STATEMENT IS A PRIVILEGED DOCUMENT NOT SUBJECT TO DISCOVERY

As argued in its Motion to Quash the Subpoena Duces Tecum, (Doc. 82), Movant maintains that the victim impact statement is protected pursuant to Ohio Revised Code section 2947.051, which states in relevant part:

In the instance Motion before this Court, Petitioner wants access to a victim impact statement from Dallas Luther Hayes aka Dallas Raines' criminal case in which Raine's was found guilty of Gross Sexual Imposition on August 10, 1995, under Hamilton County Ohio Court of Common Pleas Case No. B9502257. The victim impact statement concerns the victim in Mr.

Raine's case, who, at the time of the offense, was ten years old.

It is inconceivable how this victim impact statement can, in any way, have relevance to Petitioner's Habeas proceedings stemming from his October 14, 1992 conviction for Aggravated Murder. Petitioner was not in anyway involved in Dallas Raine's case and, in the event Petitioner seeks to find evidence favorable for his Habeas action from this unrelated victim impact statement, stretches credulity.

For these reasons, the victim impact statement is a protected confidential document pursuant to Ohio Revised Code section 2947.051 and has no relevance or bearing on Petitioner's Habeas action.

III. CONCLUSION

For the above stated reasons, Movant respectfully requests that this Court issue an order quashing Petitioner's subpoena and further issue a protective order directing that the documents sought not be had.

Respectfully submitted,

MICHAEL K. ALLEN
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HAMILTON COUNTY, OHIO

/s/ Tamara S. Sack

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the

following counsel listed below:

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